

1 ROBERT W. FREEMAN, ESQ.
2 Nevada Bar No. 03062
2 Email: Robert.Freeman@lewisbrisbois.com
3 PAMELA L. MCGAHA
3 Nevada Bar No. 08181
Email: Pamela.McGaha@lewisbrisbois.com
4 LEWIS BRISBOIS BISGAARD & SMITH LLP
6385 S. Rainbow Boulevard, Suite 600
5 Las Vegas, Nevada 89118
702.893.3383
6 FAX: 702.893.3789
Attorneys for Defendant
7 *State Farm Mutual Automobile Insurance*
Company
8

9 UNITED STATES DISTRICT COURT

10 DISTRICT OF NEVADA

11
12 DARLING JENNIFER MICHAELS YEPES,
13 Plaintiffs,
14 vs.
15 STATE FARM MUTUAL AUTOMOBILE
INSURANCE COMPANY, and DOES I-X,
16 inclusive,
17 Defendants.

CASE NO.:

PETITION FOR REMOVAL
UNDER 28 U.S.C. § 1441 (B)
(Diversity Jurisdiction)

18
19 Pursuant to 28 U.S.C. § 1441 (b), Defendant, State Farm Mutual Automobile
20 Insurance Company (“State Farm”), by and through its attorneys, Lewis Brisbois Bisgaard
21 & Smith LLP, files this Petition for Removal of Clark County District Court Case No. A-16-
22 737261-C styled *Darling Jennifer Michaels Yepes, v. State Farm Mutual Automobile*
23 *Insurance Company*, and states as follows:

24 1. On August 1, 2016, an action was commenced in the Eighth Judicial District
25 Court, Clark County, State of Nevada, entitled *Darling Jennifer Michaels Yepes, v. State*
26 *Farm Mutual Automobile Insurance Company*, Case No. A-16-737261-C (“State Court
27 Action”). Copies of the First Amended Complaint (“State Court Complaint”), Summons,
28 and Proof of Service are attached hereto and marked respectively as Exhibits A, B, and

1 C, constituting all of the papers and pleadings served on Defendant State Farm.

2 2. Service of the Summons and Complaint upon Defendant State Farm was
3 made by the Division of Insurance on August 24, 2016.

4 3. This action is a civil action of which this Court has original jurisdiction under
5 28 U.S.C. § 1332, and is one which may be removed to this Court by Defendant State
6 Farm pursuant to the provisions of 28 U.S.C. § 1441 (b) in that it is a civil action between
7 citizens of different states and the matter in controversy exceeds the sum of \$75,000.00,
8 exclusive of interest and costs.

9 4. Venue is appropriate in the unofficial Southern District of the Court pursuant
10 to 28 U.S.C. §§ 1393 (b)(2) and (c), 1441 (a); and LR IA 6-1.

11 5. In the State Court Action, the matter in controversy exceeds the sum of
12 \$75,000.00, exclusive of interest and costs. The Complaint in this action contains
13 allegations that State Farm failed to meet its contractual obligations to Plaintiff arising
14 from an insurance contract and that such actions constitute bad faith, for which Plaintiff
15 seeks to recover general as well as punitive damages¹. Plaintiff's First Amended
16 Complaint affirmatively represents that the claim is an "Arbitration Exempt Claimed
17 Amount in controversy in excess of \$50,000." See, *Exhibit A*, p. 1, lines 15-16.

18 Plaintiff further alleges the reasonable value of her "past and anticipated medical
19 bills alone are in excess of \$50,000.00." *Id.* at p. 4, lines 9-11. Plaintiff seeks contract
20 benefits under the underinsured motorist ("UIM") provision of the insurance policy issued
21 by State Farm, said policy has UIM limits of \$50,000². See, *Exhibit D*, Confirmation of

22
23 ¹ There are several cases analogous to this one in which a jury verdict of punitive damages support a
24 finding in this case that Plaintiff's claimed damage amounts could exceed \$75,000. *See, Pacific Mut. Life*
25 *Ins. Co. v. Haslip*, 499 U.S. 1 (U.S. 1991)(affirming nearly \$1 million punitive damages award over insurer's
26 mishandling of \$4,000 medical claim); *Banker's Life & Cas. Co. v. Crownshaw*, 486 U.S. 71 (U.S.
27 1988)(affirming punitive damages award of \$1.6 million arising out of insurer's failure to pay a \$20,000
28 medical claim).

² Plaintiff's First Amended Complaint mistakenly identifies UIM limits of \$25,000 in paragraph 13, p. 3, line
27. However, the same paragraph alleges Plaintiff's damages are \$50,000. Plaintiff further alleges a
28 "policy limits demand" was presented to State Farm with enough documentation provided to support
payment of the policy limits. *Id.* at p, lines 1-5.

1 Coverage.

2 In addition to seeking the UIM policy limits, Plaintiff's First Amended Complaint
 3 seeks damages of an amount in excess of \$10,000 for each of the following claims: (1)
 4 breach of the covenant of good faith and fair dealing ('bad faith'); (2) violations of NRS
 5 686A.310; and (3) punitive damages. Thus, Plaintiff seeks a minimum of \$30,000 related
 6 to the extra-contractual claims. Combined with the amount of contract benefits sought
 7 (\$50,000), Plaintiff seeks a minimum of \$80,000 in damages, without consideration of
 8 Plaintiffs prayer to recover attorney's fees. As such, it is apparent from the type of
 9 damages alleged in the Complaint that the amount in controversy is in excess of \$75,000,
 10 exclusive of interest and costs.

11 Nevada Rule of Civil Procedure 8(a) prohibits the pleading of damages in any
 12 specific amount over \$10,000.00. Because of this prohibition, the amount in controversy
 13 is often not apparent on the face of the complaint. However, Plaintiff's First Amended
 14 Complaint pleads damages of at least \$80,000, which is sufficient to satisfy the
 15 jurisdictional requirements for removal to federal court.

16 A defendant's duty is not to prove by a preponderance of the evidence that the
 17 plaintiff is likely to recover an amount in excess of the threshold. Rather, the jurisdictional
 18 minimum in diversity cases is determined by the amount at stake to either party. *Hamrick*
 19 v. *REO Props. Corp.*, 2010 U.S. Dist. LEXIS 85073 (Nev. 2010). In other words, the
 20 amount in controversy is satisfied when the plaintiff's potential gain exceeds the
 21 jurisdictional limit. *Id.* The pertinent question the Court is to ask is whether or not plaintiff
 22 is likely to ask a jury for an amount above \$75,000.00. *Canonico v. Seals*, 2013 U.S.
 23 Dist. LEXIS 60047 (Nev. 2013). As such, the appropriate figure to use in determining
 24 whether State Farm has presented adequate evidence to establish the amount in
 25 controversy is not the probable amount that Plaintiff will recover, but rather the total
 26 potential value of Plaintiff's claims considering all of the allegations and all the asserted
 27 damages. If State Farm can show by a preponderance of evidence that (1) Plaintiff is
 28 likely to ask from the jury an amount over the jurisdictional threshold, or (2) were a jury to

1 award Plaintiff full recovery, that award would be over the jurisdiction threshold, then
2 jurisdiction with the Federal Court should remain. As such, it is apparent from the type of
3 damages alleged in the Complaint that the amount in controversy is in excess of \$75,000,
4 exclusive of interest and costs, and that State Farm has satisfied the jurisdictional
5 threshold.

6 6. Defendant State Farm is informed and believes that Plaintiff was at the time
7 of filing of the State Court Action, and still is, a resident of Clark County, State of Nevada.
8 State Farm Mutual Automobile Insurance Company is an insurance company
9 incorporated in the State of Illinois, with its principle place of business in Illinois.

10 7. Based on the foregoing, Defendant State Farm respectfully submits that (a)
11 there is diversity of citizenship between Plaintiff and Defendant State Farm and (b) the
12 amount in controversy exceeds \$75,000.00. This action is, therefore properly removed to
13 the United States District Court for the District of Nevada.

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15 Exhibit "A": Complaint - State Court Action

16 Exhibit "B": Summons - State Court Action

17 Exhibit "C": Proof of Service - State Court Action

18 | Exhibit "D": Confirmation of Coverage

19 DATED this 23rd day of September, 2016.

20

LEWIS BRISBOIS BISGAARD & SMITH LLP

By /s/ Pamela L. McGaha

ROBERT W. FREEMAN, ESQ.

Nevada Bar No. 03062

PAMELA L. MCGAHA

Nevada Bar No. 08181

6385 S. Rainbow Boulevard
Las Vegas, Nevada 89118

Las Vegas, Nevada 89118

*Attorneys for Defendant
State Farm Mutual Automobile Insurance Company*

State Farm Mutual Automobile Ins. Co.

1 CERTIFICATE OF SERVICE

2 I HEREBY CERTIFY that on the 23rd day of September 2016, I electronically filed
3 the PETITION FOR REMOVAL UNDER 28 U.S.C. § 1441 (B) (Diversity Jurisdiction)
4 with the Clerk of the Court through Case Management/Electronic Filing System.

5 Tony Abbatangelo, Esq.
6 COLQUITT & ABBATANGELO, LTD.
7 321 S, Casino Center Blvd., Suite 112
8 Las Vegas, Nevada 89101

9 By: /s/ Kristen Freeman
10 An Employee of LEWIS BRISBOIS
11 BISGAARD & SMITH LLP

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